

FEB 4 1992

OFFICE OF THE CLERK

IN THE  
SUPREME COURT OF THE  
UNITED STATES

OCTOBER TERM, 1991

GENUINE PARTS CO., INC., a Georgia corporation; and  
ECHLIN, INC., formerly ECHLIN MANUFACTURING  
COMPANY, a Connecticut corporation,

*Petitioners,*

vs.

JESS WESLEY CRAWFORD; DIANE LA PLANTE; and  
RODNEY LANE,

*Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEAL FOR THE NINTH  
CIRCUIT

PETITIONERS' REPLY TO BRIEF IN OPPOSITION

Mary H. Spillane  
WILLIAMS, KASTNER & GIBBS  
*Counsel for Petitioners*  
Two Union Square  
601 Union Street, Suite 4100  
P.O. Box 21926  
Seattle, WA 98111-3926  
(206) 628-6600

\*Counsel of Record



**TABLE OF CONTENTS**

REPLY TO RESPONDENTS' FACTUAL MISSTATEMENTS .....	1
A. Except For the One Vehicle Accident Itself, All Transactions at Issue Occurred Outside the Boundaries of the Blackfeet Reservation. ....	2
B. The Record is Devoid of Evidence From Which Respondents Could Legitimately Assert That Genuine Parts and Echlin Engaged in Any Commercial Dealing or Other Consensual Arrangement With the Blackfeet Tribe or Its Members. ....	3
C. Respondents' Attempt to Equate NAPA Products with Genuine Parts or Echlin's Products Is Equally Misleading. ....	4
CONCLUSION .....	6



IN THE  
SUPREME COURT OF THE  
UNITED STATES

---

OCTOBER TERM, 1991

---

GENUINE PARTS CO., INC., a Georgia corporation; and  
ECHLIN, INC., formerly ECHLIN MANUFACTURING  
COMPANY, a Connecticut corporation,

*Petitioners,*

vs.

JESS WESLEY CRAWFORD; DIANE LA PLANTE; and  
RODNEY LANE,

*Respondents.*

---

ON PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS FOR  
THE NINTH CIRCUIT

---

PETITIONERS' REPLY TO BRIEF IN OPPOSITION

---



## REPLY TO RESPONDENTS' FACTUAL MISSTATEMENTS

In their Brief in Opposition, respondents, for the first time in this case, disingenuously assert that petitioners Genuine Parts Co., Inc. ("Genuine Parts"), and Echlin, Inc. ("Echlin"), have advertised and sold NAPA replacement parts throughout the Blackfeet Reservation. At page 2 of the Brief in Opposition, respondents state:

*Defendants are automotive parts manufacturers and distributors from outside the State of Montana who sell their nationally advertised (NAPA) replacement parts throughout the United States, including Montana and the Blackfeet Reservation.* [Emphasis added.]

Again, at page 7, they assert:

*Defendants place their NAPA products into the stream of commerce; they are advertised, sold, and used throughout the United States and the Blackfeet Reservation.* [Emphasis added.]

Finally, at page 12, respondents claim that petitioners' activities "in placing their allegedly defective products within the stream of commerce so that *they are used and sold throughout the United States and the Blackfeet Reservation*, are activities which may foreseeably affect and threaten the economic security and the welfare of the tribe as a whole." [Emphasis added.] Those assertions are not only misleading and disingenuous, but also factually unsupported by the record.

**A. Except For the One Vehicle Accident Itself, All Transactions at Issue Occurred Outside the Boundaries of the Blackfeet Reservation.**

The undisputed facts in this case establish that:

- (1) Respondents, members of the Blackfeet Indian Tribe, were injured in a one vehicle accident, involving respondent Crawford's 1968 Ford Bronco, on U.S. Highway 89, at a location within the exterior boundaries of the Blackfeet Reservation.
- (2) Respondent Crawford had purchased the Ford Bronco from a used car dealer in Coram, Montana, located outside the boundaries of the Blackfeet Reservation.
- (3) The person who had previously owned and traded the Bronco to the used car dealer and who had purchased and installed on the Bronco the master cylinder rebuild kit at issue did so outside the boundaries of the Blackfeet Reservation. He was not a member of the Blackfeet Tribe.
- (4) The master cylinder rebuild kit was purchased from a retail outlet in Columbia Falls, Montana, outside reservation boundaries, and was manufactured by Echlin, and distributed by Genuine Parts, both of whom are incorporated and have principal places of business outside Montana.

Indeed, respondents do not dispute the District Court's conclusion in its Memorandum and Order dated May 16, 1990, that "with the exception of the mishap itself, all transactions relating to the plaintiffs' causes of action

occurred outside the boundaries of the Blackfeet Indian Reservation."

**B. The Record is Devoid of Evidence From Which Respondents Could Legitimately Assert That Genuine Parts and Echlin Engaged in Any Commercial Dealing or Other Consensual Arrangement With the Blackfeet Tribe or Its Members.**

Respondents are apparently concerned that, as petitioners have argued, comity is not a sufficient basis for requiring exhaustion of tribal remedies where, as here, Genuine Parts and Echlin engaged neither in commercial dealings or other consensual arrangements with the tribe or its members nor in conduct threatening or directly affecting the political integrity, economic security, or health or welfare of the tribe as a whole. This concern has prompted respondents to stretch far beyond the record in an effort to suggest, for the first time, that Genuine Parts and Echlin have engaged in some form of commercial dealing with the Blackfeet Tribe or its members.

Contrary to respondents' disingenuous assertions, the record is devoid of evidence suggesting that Genuine Parts or Echlin advertised or sold their master cylinder rebuild kit or any other automotive part on or throughout the Blackfeet Reservation. There is absolutely nothing in the record to suggest that Genuine Parts or Echlin entered the reservation, conducted business with the tribe, engaged in any commercial dealing or other consensual arrangement with the tribe or its members, or engaged in conduct which threatened or had any direct effect on the political

integrity, the economic security, or the health or welfare of the tribe as a whole.<sup>1</sup>

**C. Respondents' Attempt to Equate NAPA Products with Genuine Parts or Echlin's Products Is Equally Misleading.**

In asserting that Genuine Parts and Echlin placed NAPA products into the stream of commerce, and that NAPA products are advertised, sold, and used throughout the United States and the Blackfeet Reservation, respondents erroneously and disingenuously attempt to equate NAPA with Genuine Parts and Echlin, or NAPA products with products distributed by Genuine Parts or manufactured by Echlin. Respondents are well aware that NAPA and Genuine Parts and Echlin are not the same. In fact, when respondents first filed their complaints in Montana State Court, they erroneously named NAPA as party defendant and later stipulated to substituting Genuine Parts as the properly named defendant.<sup>2</sup> See Appendix A.

Further, from answers to interrogatories, respondents were well aware of the distinctions existing between NAPA, Genuine Parts, and Echlin. See Genuine Parts'

---

<sup>1</sup>Indeed, there is nothing in the record establishing even that NAPA products are sold on or throughout the reservation.

<sup>2</sup>NAPA stands for National Automotive Parts Association. In their original complaint, respondents incorrectly named NAPA as "NAPA Automotive Parts & Accessories."

supplemental answer to Interrogatory No. 84 set forth verbatim in Appendix B.

In 1982, National Automotive Parts Association (NAPA), was a nonprofit Michigan corporation headquartered in Chicago, Illinois, and functioning as a trade association. NAPA consisted of seven members, one of whom was Genuine Parts, and all of whom were owners of various automotive parts distribution centers located throughout the United States. The seven members of NAPA were all separate and distinct corporations or entities, with no common control or ownership. See Appendix B.

As members of NAPA, all seven entities were licensed by NAPA to use the tradename "NAPA" in identifying the distribution centers they owned. In addition, NAPA licensed approximately 75 product manufacturers and suppliers, one of whom was Echlin, to use the tradename "NAPA" to identify the products which they shipped to member NAPA distribution centers. Finally, NAPA authorized "NAPA jobbers" -- various independently owned part stores or businesses which elected to purchase their products from a member NAPA company -- to identify their individual stores or businesses with the "NAPA" sign. See Appendix B.

Thus, even assuming, although there is nothing in the record establishing, that nationally advertised products bearing the "NAPA" tradename were sold on the Blackfeet Reservation, respondents have no basis to assert that such products were products distributed or manufactured by Genuine Parts or Echlin. The master cylinder rebuild kit

involved in this case was supplied by Echlin to Genuine Parts in Spokane, Washington, and from Genuine Parts' Spokane distribution center to Courtesy Motor Supply (a NAPA jobber) in Columbia Falls, Montana, outside reservation boundaries. See Appendix B. There is nothing in the record supporting an assertion that either Genuine Parts or Echlin has sold NAPA products on or throughout the reservation.

## CONCLUSION

Respondents' assertions in their Brief in Opposition, that Genuine Parts Co. and Echlin, Inc. have advertised and sold NAPA replacement parts throughout the Blackfeet Reservation is disingenuous, misleading and factually unsupported by the record. Petitioners respectfully submit that respondents' misstatements of fact in this regard should not be considered and should have no bearing on the Court's decision whether to grant the Petition for Writ of Certiorari. For all the reasons set forth in the Petition for Writ of Certiorari, petitioners respectfully pray that a

Writ of Certiorari be issued to review the judgment and opinion of the Court of Appeals for the Ninth Circuit.

RESPECTFULLY SUBMITTED this 3rd day of February, 1992.

Mary H. Spillane  
WILLIAMS, KASTNER & GIBBS  
Two Union Square  
601 Union Street, Suite 4100  
P.O. Box 21926  
Seattle, WA 98111-3926  
(206) 628-6600



**APPENDIX A**

IN THE DISTRICT COURT OF THE EIGHTH  
JUDICIAL DISTRICT OF THE STATE OF MONTANA  
IN AND FOR THE COUNTY OF CASCADE

JESS WESLEY CRAWFORD,

PLAINTIFF,

v.

STEVE HOOPER, d/b/a MIDAS MUFFLER SHOPS;  
MIDAS INTERNATIONAL CORPORATION; CHARLIE  
WALDROP, d/b/a CHARLIE'S PLACE; NAPA  
AUTOMOTIVE PARTS & ACCESSORIES; ECHLIN,  
INC., FORMERLY KNOWN AS ECHLIN  
MANUFACTURING COMPANY; AND THE STATE OF  
MONTANA,

DEFENDANTS.

STIPULATION

FILE NO. ADV-84-855

COME NOW, the plaintiff, by and through his counsel  
of record, and the undersigned attorney on behalf of  
NAPA AUTOMOTIVE PARTS & ACCESSORIES and  
stipulate and agree as follows:

The true and correct name for the defendant above  
named as NAPA AUTOMOTIVE PARTS &  
ACCESSORIES is GENUINE PARTS COMPANY, INC.

The parties hereby agree that the name GENUINE PARTS COMPANY, INC., shall be hereafter used in this litigation to refer to NAPA AUTOMOTIVE PARTS & ACCESSORIES.

DATED this 4 day of September, 1984.

SMITH, BAILLIE & WALSH  
121 Fourth Street North, Suite 2A  
P.O. Box 2227  
Great Falls, MT 59403-2227  
Attorneys for Defendant GENUINE PARTS

By: /s/  
DENNIS P. CLARKE

MARRA, WENZ, JOHNSON & HOPKINS, P.C.  
414 Davidson Building  
Great Falls, MT 59401  
Attorneys for Plaintiff

By: /s/ Tom Marra

**APPENDIX B**

IN THE DISTRICT COURT OF THE EIGHTH  
JUDICIAL DISTRICT OF THE STATE OF MONTANA  
IN AND FOR THE COUNTY OF CASCADE

JESS WESLEY CRAWFORD,

PLAINTIFF,

v.

HOOPER ENTERPRISES, INC., ET AL,

DEFENDANTS.

GENUINE PARTS COMPANY'S  
SUPPLEMENTAL INTERROGATORY  
ANSWER

FILE NO. ADV-84-855

COMES NOW, GENUINE PARTS COMPANY and  
supplements its answers to interrogatories posed by  
plaintiff as follows:

\* \* \*

INTERROGATORY NO. 84: Please state what type  
of business, financial, etc., relationship exists between  
NAPA AUTOMOTIVE PARTS & ACCESSORIES and  
ECHLIN, INC., formerly ECHLIN MANUFACTURING  
COMPANY. If you will do so without a motion to  
produce, please provide all documents reflecting the

business relationship between the two above-named defendants.

SUPPLEMENTAL ANSWER: NAPA AUTOMOTIVE PARTS & ACCESSORIES does not exist. In 1982, there was an entity called the National Automotive Parts Association (NAPA), which was a nonprofit Michigan corporation headquartered in Chicago, Illinois. NAPA functioned as a trade association whose members were the owners of various automotive parts distribution centers located throughout the United States. In 1982, the members of NAPA were:

- (a) Genuine Parts Company, a Georgia corporation headquartered in Atlanta, Georgia, and the owner of 40 distribution centers;
- (b) General Automotive Parts Corporation, an Indiana corporation headquartered in Dallas, Texas, and the owner of 15 automotive parts distribution centers;
- (c) NAPA - Hawaii, (type of entity unknown), the owner of one distribution center in Waipahu, Hawaii;
- (d) Quaker City Motor Parts Co., a corporation headquartered in Middletown, Delaware, and the owner of 6 distribution centers;
- (e) Standard Unit Parts Corporation, an Illinois corporation headquartered in Normal, Illinois, and the owner of 3 distribution centers;

(f) Wilmar, Inc., a corporation headquartered in Pittsburgh, Pennsylvania, and the owner of 3 distribution centers; and

(g) Brittain Brothers, a corporation headquartered in Oklahoma City, Oklahoma, and the owner of 2 distribution centers.

These corporations or entities were all separate and distinct with no common control or ownership.

In 1982, as members of NAPA, all seven entities were licensed by NAPA to use the tradename "NAPA" in conjunction with the distribution of automotive replacement parts. Therefore, all distribution centers owned by these seven entities listed were identified as NAPA distribution centers. In addition, NAPA served as a point of contact between the seven member entities and the product manufacturers and suppliers, which number approximately 75, which furnish automotive replacement parts and supplies to NAPA distribution centers. Once it has been determined that a product will be marketed through the member NAPA distribution centers, then NAPA itself can license that particular supplier to use the tradename "NAPA" to identify the products which are shipped to member NAPA distribution centers. ECHLIN is such a supplier. ECHLIN has been licensed by NAPA to use the tradename "NAPA" on the products ECHLIN manufactures or supplies [sic] to NAPA member organizations.

The chain of distribution for an ECHLIN product would be ECHLIN to GENUINE PARTS COMPANY at

one of its distribution centers and from GENUINE PARTS COMPANY to what we refer to as NAPA jobbing stores. NAPA jobbing stores are independently owned parts stores or businesses who, because they elect to purchase their products from a member NAPA company, are authorized to identify their individual parts stores with the "NAPA" sign. Therefore, we refer to these customers as NAPA jobbers.

With regard to the master cylinder involved in this case, it is our understanding that the product was supplied by ECHLIN to GENUINE PARTS COMPANY in Spokane, Washington, and from our Spokane distribution center to our customer, Courtesy Motor Supply (a NAPA jobber) in Columbia Falls, Montana. As you can see in the above scenario, the National Automotive Parts Association ("NAPA") was not involved in the chain of distribution at all.

GENUINE PARTS COMPANY is a customer of ECHLIN. There is no relationship whatsoever between ECHLIN and GENUINE other than ECHLIN is a supplier of automotive products to GENUINE PARTS COMPANY. In the same sense, GENUINE is a distributor of ECHLIN products identified with the "NAPA" logo to wholesale customers of GENUINE. It is certainly possibly that

ECHLIN distributes parts which are not identified with the NAPA logo through other distributors.

DATED this 3rd day of September, 1984.  
**SMITH, BAILLIE & WALSH**  
121 Fourth Street North, Suite 2A  
P.O. Box 2227  
Great Falls, MT 59403-2227  
Attorneys for GENUINE

By: /s/  
DENNIS P. CLARKE